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IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1920.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
Petitioner,
v.
MARY S. LIEBING,
Respondent.

No. 712

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI, AND BRIEF IN SUPPORT THEREOF.

S. W. FORDYCE,
JOHN H. HOLLIDAY,
THOMAS W. WHITE,
W. H. WOODWARD,
FREDERICK L. ALLEN,
Counsel for Petitioner.

St. Louis Law Printing Co., 415 N. Eighth St. Bell, Main 1819.

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1920.

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| MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Petitioner, v. MARY S. LIEBING, Respondent. | No. ———. |

## NOTICE TO RESPONDENT.

To the Above-Named Respondent:

Take Notice, that on Monday, March 7th, 1921, at the opening of the court on that day, or as soon thereafter as counsel can be heard, a petition for writ of certiorari in the above case will be submitted to the Supreme Court of the United States.

In support of said petition a brief will also be

presented, and copy of said petition and brief are herewith served upon you.

S. W. FORDYCE,
JOHN H. HOLLIDAY,
THOMAS W. WHITE,
W. H. WOODWARD,
FREDERICK L. ALLEN,
Counsel for Petitioner

Service of the foregoing notice and copies of the petition and brief herein mentioned is hereby acknowledged and admitted this **19th** day of February, 1921.

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Counsel for Respondent.

IN THE

# SUPREME COURT OF THE UNITED STATES.

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OCTOBER TERM, A. D. 1920.

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MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
Petitioner,
v.
MARY S. LIEBING,
Respondent.
No. ———.

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## PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Supreme Court of the United States:

The above-named petitioner Mutual Life Insurance Company of New York prays for a writ of certiorari to reverse the final judgment and decree of the Supreme Court of the State of Missouri, being the

highest court in said state wherein a decision could be had, which affirms a judgment and decree of the Circuit Court of the City of St. Louis and State of Missouri in the above-entitled cause, and respectfully shows to the Court as follows:

I.

Mary S. Liebing seeks in this action to recover damages against the Mutual Life Insurance Company of New York for fifty-two thousand nine hundred eleven dollars and forty-three cents ($52,911.43), with interest at six per cent from November 20th, 1906, together with ten per cent as damages and reasonable attorney's fees, on account of a certain policy of insurance numbered 1207072, issued by said Mutual Life Insurance Company of New York upon the life of Frederick W. V. Blees, then the husband of said Mary S. Liebing.

This action was brought in the Circuit Court of the City of St. Louis by petition filed December 9th, 1912, and trial was had on May 15th, 1913, at which time the plaintiff suffered a nonsuit at the close of her case. From this decision the plaintiff appealed to the Supreme Court of Missouri, where the case was reversed and remanded for trial on the merits (see Liebing v. Mutual Life Insurance Company, 269 Mo. 509).

The case was thereupon remanded and the plaintiff

filed an amended petition on February 2nd, 1917, and a second amended petition on February 3rd, 1917. To this second amended petition defendant filed an answer and to this answer the plaintiff filed a reply.

On these pleadings the case went to trial a second time on April 30th, 1917, before a jury in said Circuit Court of the City of St. Louis and at the close of the case the Court instructed the jury to return a verdict in favor of plaintiff on the policy in the sum of fifty-two thousand nine hundred eleven dollars and forty-three cents ($52,911.43), with interest, but left the question of damages and attorney's fees to the jury, and thereafter the jury returned a total verdict for the plaintiff of ninety-two thousand and sixty-nine dollars and twenty-eight cents ($92,069.28).

From the judgment rendered on this verdict the defendant in due course appealed to the Supreme Court of Missouri, where the case was reversed and remanded for new trial on November 27th, 1918 (see Liebing v. Mutual Life Insurance Company, 276 Mo. 118).

After the case was remanded to the Circuit Court of the City of St. Louis, to wit, on the 14th day of February, 1919, the plaintiff filed an amended reply to the defendant's answer and again amended this reply by leave on April 4th, 1919.

On May 12th, 1919, the case came on for trial the third time in the Circuit Court of the City of St.

Louis before a jury, and the trial continued until May 14th, 1919, on which day the Court instructed the jury to return a verdict in favor of plaintiff for the amount of the policy and interest, but left the question of damages and attorney's fees to the jury, and thereafter the jury returned a verdict in favor of plaintiff in the total amount of one hundred seven thousand five hundred forty-two dollars and nine cents ($107,542.09).

From the judgment rendered on this verdict the defendant again appealed to the Supreme Court of Missouri, and on December 13th, 1920, said Court affirmed the judgment of the Circuit Court of the City of St. Louis, provided the plaintiff would enter a remittitur of fifteen thousand dollars ($15,000.00), being the amount of damages and attorney's fees allowed by the jury on the third trial of said cause, and included in the amount of said judgment.

Thereafter, to wit, on or about the 23rd day of December, 1920, the plaintiff entered said remittitur of fifteen thousand dollars ($15,000.00), and thereupon final judgment was entered in said Supreme Court of Missouri affirming the judgment of the court below as modified by said remittitur.

From this action of the Supreme Court of Missouri in entering said final judgment affirming said judgment of the Circuit Court of the City of St. Louis, as modified, your petitioner has already sued out and

had allowed a writ of error from said Supreme Court of Missouri to the Supreme Court of the United States, and has filed supersedeas bond and has filed with the Clerk of the Supreme Court of the United States a transcript of the record of said cause in the Circuit Court of the City of St. Louis and in the Supreme Court of the State of Missouri, including the majority and dissenting opinions of said Supreme Court of Missouri handed down in said third appeal on said 13th day of December, 1920.

II.

The action is based upon the following facts:

In September, 1901, Frederick W. V. Blees, a naturalized citizen of the United States, living at Macon, Missouri, made written application to the Mutual Life Insurance Company of New York for a policy of insurance upon his life, calling for the delivery of fifty one-thousand-dollar twenty-year 5-per-cent gold bonds to his executors or assigns, or at their option for the payment to them of $65,250.00 in cash. The policy was issued by the company on September 29th, 1901, and was delivered to said Blees at Macon, Missouri. On March 2nd, 1904, the policy was assigned by Blees to the plaintiff, his then wife. On October 12th, 1904, Blees and the plaintiff jointly executed a loan agreement and borrowed from the company in New York the sum of $9,550.00, being the full surrender value of

the policy, and assigned and pledged the policy as security for the repayment of the loan. By the terms of this loan agreement the company was given the absolute right, in the event the loan was not paid on September 29th, 1905, to apply the surrender value of the policy to the payment of the loan and cancel the policy.

The loan agreement was signed by the plaintiff and Blees at Macon, Missouri, and was forwarded, together with the policy, to the company's office in New York, where the company accepted the agreement and made the loan, using part of the loan to pay the premium which had fallen due September 29th, 1904, part of the loan to pay interest on the premium on the loan to September 29th, 1905, and sending a check on the American Exchange National Bank of New York for the balance of the loan, to the joint order of the insured and the plaintiff, to Macon, Missouri. This check was endorsed by the plaintiff and the insured and deposited in the National Bank of Commerce in St. Louis, and was finally paid by the bank on which it was drawn in New York.

No further premiums were ever paid on the policy, nor was the loan paid at its due date, namely, September 29th, 1905.

The company waited until November 15th, 1905, and then exercised the rights given it under the loan agreement and foreclosed the pledge on the policy

(which had remained in New York, together with the loan agreement), applied the full cash-surrender value of the policy, namely, $9,550.00, to the payment of the loan, and canceled the indebtedness and canceled the policy.

III.

The plaintiff's contention is that notwithstanding the failure of the insured to pay the premium due September 29th, 1905, and the failure to pay the loan of $9,550 on that date, that said policy was nevertheless carried in extended insurance beyond the date of the death of the insured by virtue of Section 7897 of the Revised Statutes of Missouri 1899, and that the action of your petitioner in exercising its rights under said loan agreement and in applying the entire surrender value of said policy, to wit, $9,550, to the repayment of said loan of like amount was illegal, null and void.

IV.

The contention of your petitioner is that the loan agreement of October 12th, 1904, was accepted by your petitioner in New York and to be performed in New York and was a New York contract, as held by this Court in the case of **New York Life Insurance**

**Company v. Dodge,** 246 U. S. 357, and that therefore as decided in said case the application to said contract of said Section 7897 of the Revised Statutes of Missouri, 1899, deprived your petitioner of its property and liberty of contract without due process of law, in violation of its rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States, and also denied full faith and credit to the public acts, records and judicial proceedings of the State of New York in violation of Section 1 of Article IV of the Constitution of the United States.

V.

Your petitioner states that said contentions of the petitioner in regard to its constitutional rights and privileges were ruled adversely to your petitioner in the majority opinion of the Supreme Court of Missouri on the third appeal in this case, as the copy of said opinion included in the transcript of the record heretofore filed in the office of the Clerk of the Supreme Court of the United States in connection with the writ of error will fully show, and that in so deciding said Supreme Court of Missouri reversed its opinion on second appeal in this case heretofore referred to and to be found in 276 Mo. 118, where the

said Supreme Court of Missouri had held that this case was governed by the case of **New York Life Insurance Company v. Dodge**, hereinabove cited, and that the loan agreement in this case was a New York contract governed by the laws of New York, and not by the statutes of Missouri.

VI.

Your petitioner states that the effect of said opinion and final judgment as entered on or about December 23rd, 1920, in the Supreme Court of Missouri, was to disregard the decision of this Court in said case of New York Life Insurance Company v. Dodge, hereinbefore cited, and to deprive your defendant of the rights and privileges guaranteed to it by the Constitution of the United States; that is, to deprive it of its property and liberty of contract without due process of law and to deny full faith and credit to the public acts, records and judicial proceedings of the State of New York.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued by the Court, directed to the Supreme Court of the State of Missouri, and that the judgment of said Supreme Court

of Missouri in said case be reversed by this Honorable Court.

Respectfully submitted,

MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK,

Petitioner.

By S. W. FORDYCE,
JOHN H. HOLLIDAY,
THOMAS W. WHITE,
W. H. WOODWARD,
FREDERICK L. ALLEN.

State of Missouri, } ss.
City of St. Louis. }

John H. Holliday, being duly sworn, on oath states that he is one of the counsel for the petitioner. That he knows the contents of the foregoing petition, and that the facts therein stated are true and correct to his best knowledge and belief.

John H. Holliday.

Subscribed and sworn to before me this 19th day of February, 1921.

My commission expires the 13th day of July, 1924.

Madeleine G. Kelly,
Notary Public, City of St. Louis,
State of Missouri.

We hereby certify that we have examined and read the foregoing petition for writ of certiorari, and that in our opinion said petition is well founded and should be granted by this Honorable Court, and that this petition is not filed for delay.

S. W. Fordyce,
John H. Holliday,
Thomas W. White,
W. H. Woodward,
Frederick L. Allen,
Counsel for Petitioner.

## BRIEF IN SUPPORT OF PETITION.

### I.

The loan agreement entered into by the insured, Frederick W. V. Blees, on October 12th, 1914, and also signed by Mary S. Blees, his then wife, now Mary S. Liebing, the respondent, was a contract separate and distinct from the policy of insurance accepted by the Mutual Life Insurance Company in the State of New York to be performed in the State of New York, and therefore a New York contract and governed by the laws of the State of New York.

New York Life Insurance Co. v. Dodge, 246 U. S. 357;
New York Life Insurance Company v. Head, 234 U. S. 149.

### II.

The loan agreement and pledge of the policy thereunder and the action of the Mutual Life Insurance Company in foreclosing said pledge and applying the surrender value of the policy to the payment of the loan when said loan was not paid at maturity were legal and valid under the laws of the State of New York.

Clare v. Mutual Life Insurance Company, 201 N. Y. 492;
Stevens et al. v. Mutual Life Insurance Company of New York, 227 N. Y. 524.

III.

The action of the Supreme Court of Missouri in so construing Section 7897 of the Revised Statutes of Missouri, 1899, as to apply said statute to said loan agreement entered into and to be performed in the State of New York was an attempt to extend the application of the Missouri statute to a New York contract and deprived the Mutual Life Insurance Company of New York of its property and right of contract, and denied full faith and credit to the public acts, records and judicial proceedings of the State of New York.

> New York Life Insurance Co. v. Head, supra;
> New York Life Insurance Co. v. Dodge, supra;
> Algeyer v. Louisiana, 165 U. S. 578.

Wherefore, it is respectfully submitted that the petition for writ of certiorari to review the decision of the Supreme Court of Missouri should be granted.

S. W. FORDYCE,
JOHN H. HOLLIDAY,
THOMAS W. WHITE,
W. H. WOODWARD,
FREDERICK L. ALLEN,
Counsel for Petitioner.

St. Louis, Missouri,
February 19th, 1921.